REMARKS/ARGUMENTS

I. Status of the Application

Claims 36-71 are pending in the present Application. In a Final Office Action mailed on April 30, 2008, the Examiner rejected claims 36-71 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 7,010,578 (hereinafter "**Lewin**") in view of U.S Patent 6,957,269 (hereinafter "**Williams**"). The Examiner cites but does not rely upon U.S. Patent 6,690,918 (hereinafter "**Evans**").

II. The Cited References

The **Lewin** reference discloses a system to configure third-party HTTP caches to function as a content delivery service. This may include a traffic analysis mechanism and logging mechanism to identify content being delivered and generate delivery reporting.

The **Williams** reference discloses a network device and associated data structures for selectively pausing data transmissions based on an identified type of network congestion. A network device which controls communication can suspend types of communication utilizing pause frames.

The **Evans** reference discloses methods for initiating communication between at least two terminals according to matched profiles when terminals are within connection range. When devices are within proximity for communication, the devices exchange profiles and initiate communication based upon the priority of profile match.

III. Rejections Under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-35 under 35 U.S.C. §103(a) as being unpatentable over **Lewin** in view of **Williams**. The Examiner cites **Evans** as germane but does not rely upon this reference in rejecting the subject claims. Applicants respectfully submit that for the following reasons claims 36-71 are allowable under 35 U.S.C. §103(a).

To establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Furthermore, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both

be found in the prior art, not in Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Independent Claim 36

Independent claim 36 recites the following claim limitations.

"receiving one or more registrations, wherein each registration comprises a set of criteria for transferring data"

Specification Support, for instance in paragraph **[0025]**

"recognizing a communication link"

Specification Support, for instance in paragraph **[0024]**

"identifying selected registrations whose associated set of criteria has been met"

Specification Support, for instance in paragraph **[0027]**

"assigning priority indicators to the selected registrations"

Specification Support, for instance in paragraph **[0028]**

"initiating a transfer over the communication link to transfer data associated with the selected registrations based on the priority indicators"

Specification Support, for instance in paragraph **[0027]**

Applicants submit that the **Lewin** and **Williams** references, taken alone or in any proper combination, fail to disclose or suggest all of the recited limitations of claim 36. For example, the cited documents fail to disclose *receiving one or more registrations, wherein each registration comprises a set of criteria for transferring data*. **Lewin** identifies several features to implement a third-party cache as a content delivery service, including the optional step of registration. *See* Lewin, col. 3 lines 43-44. Contrary to the Examiner's conclusion, **Lewin** at best teaches a registration step that does not take into consideration *a set of criteria for transferring data*. The metrics utilized in **Lewin** do not actively set forth criteria for transferring data, but rather passively provide information as to what data is transferred. *See* Lewin, col. 2 line 67 – col. 3, line 2 (traffic monitoring). **Lewin** suggests that third party caches may utilize CIDR block restrictions to restrict traffic, but this relates merely to shutting off access to groups

of users based on IP address. *See* Lewin col. 4 lines 33-40. It is too generous a reading of **Lewin** to suggest an un-disclosed, third-party cache including a transfer-preventing mechanism based upon IP address renders obvious *a set of criteria for transferring data.*

The cited references also fail to suggest *identifying selected registrations whose associated set of criteria has been met.* The Examiner asserts **Lewin** discloses "identifying the registrations with metrics matching for delivering of content." *See* Office Action dated April 30, 2008, page 3. However, as discussed *supra*, **Lewin** at best discloses passive traffic monitoring, and not a method wherein *registration comprises a set of criteria for transferring data.* Further, **Lewin** performs no identification or matching process at all. The closest similar function disclosed in **Lewin** is comparing a host referenced in a header against a list of CDN domains. It is apparent that this function does not render obvious *identifying selected registrations whose associated set of criteria has been met.*

The Examiner concedes **Lewin** does not teach *assigning priority indicators to the selected registrations.* **Williams** fails to correct the shortcomings of **Lewin** in suggesting this aspect of claim 36. **Williams** does discuss the use of a priority indicator to determine which station to pause when alleviating traffic congestion. In spite of this, **Williams** merely seeks to allow high-priority transfers more resources by controlling bandwidth flow to low-priority connections. This does not disclose the use of priority indicators in conjunction with *selected registrations.* **Williams** does not suggest that any process (registration) need be completed before flows are prioritized, or that any groups of non-prioritized flows (selected registrations, as opposed to all registrations) will be identified as subsets.

Lewin and **Williams** also fail to suggest *initiating a transfer over the communication link to transfer data associated with the selected registrations based on the priority indicators.* While **Williams** does suggest transmitting pause frames based on the priority of a data flow, this is distinct from Applicants' claimed feature. In **Williams**, the transfer is not *initiated* based upon the priority indicators. Rather, the transfer already exists and is being paused or terminated to alleviate congestion. Further, the pause frames transmitted in **Williams** are peripheral to the actual communication. Pause frames are sent to control the flow by pausing the intended or requested transfer in progress. The subject claims can consider priority indicators before initiating a transfer, and the *data associated with the selected registrations* includes actual

transmission content, as opposed to a pause frame which is an extrinsic measure to suspend conveyance of such content.

Evans does not remedy these defects of Lewin and Williams in reaching essential features the subject claims. Evans utilizes Bluetooth or similar technology to share profiles when devices are in range, which facilitates contact between users. User criteria or priorities can be examined with respect to shared profiles to notify users when a suitable social contact is found nearby. While Evans coincidentally shares common language with the subject application, this reference is readily distinguished from Applicants' claims, and does not render obvious critical elements of the subject claims when combined with Lewin and Williams.

Therefore, because the Lewin and Williams references fail to render obvious all features of claim 36, and because combining these references with the Evans reference would not cure the defects of the cited art in disclosing all aspects of the subject invention, Applicants respectfully submit that claim 36 is allowable under 35 U.S.C. §103(a).

Dependent Claims 37-44

Lewin and Williams (and additionally Evans) also fail to render obvious features of dependent claims 37-44. For example, the cited references do not disclose systems or methods *wherein the set of criteria identifies at least one of an amount of data to be transferred, a type of data to be transferred, a type of communication link, the amount of data currently being sent over the communication link, an available data transfer rate, power consumption associated with transmitting the data, an amount of data packet re-transmissions per unit time, a battery power level, a user activity level, and a time of day indicator* (claim 37). The registration process in Lewin does disclose passive traffic-monitoring, but such metrics are not actively considered to control data provided by third-party caches. Further, Lewin summarily includes this component without thorough discussion of what metrics would be kept, and does not disclose the above-identified measurements.

Nor do the Lewin, Williams, or Evans suggest *the one or more registrations identify at least one of opportunistic data transfers and periodic data transfers* (claim 41). While no portion of Lewin discloses identifying *opportunistic data transfers and periodic data transfers*, the Examiner specifically cites col. 5, line 31 through col. 6, line 8. This excerpt discloses that

"The CDN preferably provides the CDN with given information during the registration process." *See* Lewin col. 5 lines 31-32. Providing information during registration, which may include CDN-provisioned content or a cache identifier, is not analogous to *registrations* which *identify at least one of opportunistic data transfers and periodic data transfers*. Additionally, **Lewin** is not concerned with *opportunistic* or *periodic data transfers* beyond the simple fact that the cited references generally relates to transferring data in some fashion.

In view of the foregoing, it is apparent that **Lewin** and **Williams** (and **Evans**) do not render obvious these and other features of claims 37-44.

Further, claims 37-44 depend from independent claim 36. Claims 37-44 are allowable for at least the same reasons as the independent claim 36. If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2D 1071, 1076, 5 USPQ.2d 1596 (Fed. Cir. 1988).

Accordingly, Applicants respectfully submit that dependent claims 37-44 are allowable under 35 U.S.C. §103(a).

Independent Claims 45, 54, and 63

While the features of independent claims 45, 54 and 63 invoke alternative language, such exact language is omitted in these remarks for brevity. The exact language of these claims is nonetheless considered, and at least the following comments are pertinent to these independent claims. In accordance with the arguments presented above with regards to claim 36, the **Lewin** and **Williams** references fail to disclose or suggest all of the recited limitations of the new independent claims 45, 54, and 63. Further, any proper combination of **Evans** with **Lewin** and **Williams** would not render obvious the features of these independent claims. Accordingly, Applicants respectfully submit that independent claims 45, 54, and 63 are allowable under 35 U.S.C. §103(a).

Dependent Claims 46-53, 55-62, and 64-71

Claims 46-53, 55-62, and 64-71 are allowable for at least the same reasons as their respective independent base claims, and for similar reasons to those discussed above regarding dependent claims 37-44. If an independent claim is nonobvious under 35 U.S.C. §103, then any

claim depending therefrom is nonobvious. *In re Fine*, 837 F.2D 1071, 1076, 5 USPQ.2d 1596 (Fed. Cir. 1988).

Accordingly, Applicants respectfully submit that dependent claims 46-53, 55-62, and 64-71 are allowable under 35 U.S.C. §103(a).

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are respectfully requested. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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